

Proposed technical correction:

**SECTION \_\_\_\_.** G.S. 14-118.6 reads as rewritten:

**"§ 14-118.6. Filing false lien or encumbrance.**

(a) It shall be unlawful for any person to present for filing or recording in a public record or a private record generally available to the public a false lien or encumbrance against the real or personal property of a public officer, a public employee, or an immediate family member of the public officer or public employee on account of the performance of the public officer or public employee's official duties, knowing or having reason to know that the lien or encumbrance is false or contains a materially false, fictitious, or fraudulent statement or representation. For purposes of this subsection, the term "immediate family member" means a spouse or a child. Any person who violates this subsection shall be guilty of a Class I felony.

(b) When presented to the register of deeds for recording, if a register of deeds has a reasonable suspicion that the lien or encumbrance is false, as described in subsection (a) of this section, the register of deeds may refuse to record the lien or encumbrance. Neither the register of deeds nor any other entity shall be liable for recording or the refusal to record a lien or encumbrance as described in subsection (a) of this section. If the recording of the lien or encumbrance is denied, the register of deeds shall allow the recording of a Notice of Denied Lien or Encumbrance Filing on a form adopted by the Secretary of State, for which no filing fee shall be collected. The Notice of Denied Lien or Encumbrance Filing shall not itself constitute a lien or encumbrance. When recording is denied, any interested person may initiate a special proceeding in the county where the recording was denied within ten (10) business days of the filing of the Notice of Denied Lien or Encumbrance Filing asking the superior court of the respective county to find that the proposed recording has a statutory or contractual basis and to order that the document be recorded. If, after hearing, upon a minimum of five (5) days' notice as provided in Rule 5 of the Rules of Civil Procedure and opportunity to be heard to all interested persons and all persons claiming an ownership interest in the property, the court finds that there is a statutory or contractual basis for the proposed recording, the court shall order the document recorded. A lien or encumbrance recorded upon order of the court under this subsection shall have a priority interest as of the time of the filing of the Notice of Denied Lien or Encumbrance Filing. If the court finds that there is no statutory or contractual basis for the proposed recording, the court shall enter an order finding that the proposed recording is null and void and that it shall not be filed, indexed, or recorded and a certified copy of that order shall be recorded by the register of deeds that originally denied the recording. The review by the judge under this subsection shall not be deemed a finding as to any underlying claim of the parties involved. If a special proceeding is not initiated under this subsection within ten (10) business days of the filing of the Notice of Denied Lien or Encumbrance Filing, the lien or encumbrance is deemed null and void as a matter of law.

(b1) When a lien or encumbrance is presented to a clerk of superior court for filing and the clerk of court has a reasonable suspicion that the lien or encumbrance is false as described in subsection (a) of this section, the clerk of court may refuse to file the lien or encumbrance. Neither the clerk of court nor the clerk's staff shall be liable for filing or the refusal to file a lien or encumbrance under this subsection. The clerk of superior court shall not file, index, or docket the document against the property of a public officer or public employee until that document is approved by any judge of the judicial district having subject matter jurisdiction for filing by the clerk of superior court by any judge of the judicial district having subject matter jurisdiction.

court. If the judge determines that the filing is not false, the clerk shall index the claim of lien. A lien or encumbrance filed upon order of the court under this subsection shall have a priority interest as of the date and time of indexing by the clerk of superior court. If the court finds that there is no statutory or contractual basis for the proposed filing, the court shall enter an order that the proposed filing is null and void as a matter of law, and that it shall not be filed or indexed. The clerk of superior court shall serve the order and return the original denied filing to the person or entity that presented it. The person or entity shall have 30 days from the entry of the order to appeal the order. If the order is not appealed within the applicable time period, the clerk may destroy the filing.

(c) Upon being presented with an order duly issued by a court of competent jurisdiction of this State declaring that a lien or encumbrance already recorded or filed is false, as described in subsection (a) of this section, and therefore null and void as a matter of law, the register of deeds or clerk of court that received the recording or filing, in addition to recording or filing the court's order finding the lien or encumbrance to be false, shall conspicuously mark on the first page of the original record previously filed the following statement: "THE CLAIM ASSERTED IN THIS DOCUMENT IS FALSE AND IS NOT PROVIDED FOR BY THE GENERAL LAWS OF THIS STATE."

(d) In addition to any criminal penalties provided for in this section, a violation of this section shall constitute a violation of G.S. 75-1.1.

(e) Subsections (b), (b1), and (c) of this section shall not apply to filings under Article 9 of Chapter 25 of the General Statutes or under Chapter 44A of the General Statutes." (2012-150, s. 4; 2013-170, s. 1; 2013-410, s. 27.8; 2015-87, s. 1.)

Explanation: makes phrasing clearer.

Background material:

**From:** Janice Paul (Research)

**Sent:** Monday, October 12, 2015 3:43 PM

**To:** Bly Hall (Bill Drafting); Susan Barham (Research)

**Subject:** FW: Question about missing word in S.L. 2015-87 (S 83)

For TC during the short session. Clarifying.

**From:** Janice Paul (Research)

**Sent:** Monday, October 12, 2015 3:42 PM

**To:** 'Farb, Robert L'

**Subject:** RE: Question about missing word in S.L. 2015-87 (S 83)

Bob:

Re: "The clerk of superior court shall not file, index, or docket the document against the property of a public officer or public employee until that document is approved for filing by the clerk of superior court by any judge of the judicial district having subject matter jurisdiction."

If anyone has to question the intent and meaning, it needs to be clarified – so thank you for pointing this out.

In order to clarify any confusion, I am going to notify our Revisor of Statutes and our technical corrections staff that the wording should be as follows:

- “...until the document is approved by the judge for filing by the clerk...”

If you have a different suggestion, please let me know. I have also brought this to the attention of the numerous stakeholders involved in the drafting of this legislation.

This will have to be addressed during the short session.

Jan

**From:** Farb, Robert L [<mailto:farb@sog.unc.edu>]  
**Sent:** Monday, October 12, 2015 2:24 PM  
**To:** Janice Paul (Research)  
**Subject:** RE: Question about missing word in S.L. 2015-87 (S 83)

So just to make sure I understand, there should be an “and” between “by the clerk of superior court” and “by any judge . . . .” Am I correct? Thanks.

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**From:** Janice Paul (Research) [<mailto:Janice.Paul@ncleg.net>]  
**Sent:** Monday, October 12, 2015 1:32 PM  
**To:** Susan L. Sitze (Research) <[Susan.Sitze@ncleg.net](mailto:Susan.Sitze@ncleg.net)>; Farb, Robert L <[farb@sog.unc.edu](mailto:farb@sog.unc.edu)>  
**Subject:** RE: Question about missing word in S.L. 2015-87 (S 83)

Bob:

Susan is correct – every lien denied filing by the clerk must then to before a judge to determine whether the denial will be upheld; a judge must approve the filing by the clerk.

Jan

**From:** Susan L. Sitze (Research)  
**Sent:** Monday, October 12, 2015 12:40 PM  
**To:** 'Farb, Robert L'  
**Cc:** Janice Paul (Research)  
**Subject:** RE: Question about missing word in S.L. 2015-87 (S 83)

Bob –

I didn't work on that bill, so I'm forwarding this to Jan Paul who did. However, it appears to me that it is most likely intended to mean that it is approved by the judge for filing by the clerk. But Jan will have better insight on what the intent was.

Susan

**From:** Farb, Robert L [<mailto:farb@sog.unc.edu>]

**Sent:** Thursday, October 01, 2015 4:27 PM

**To:** Susan L. Sitze (Research)

**Subject:** Question about missing word in S.L. 2015-87 (S 83)

In new G.S. 114-118.6(b1), set out in line 7, page 2, of this session law, there is apparently a missing "or" or "and" between "court" and "by." Do you know if a technical correction was made in a later session law or in a ratified bill awaiting action by the Governor (I could not find a correction)? If not, do you have an opinion which word was likely intended? Thanks.

Robert L. Farb

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